

FIRST APPEAL NO.101 OF 1999

1. State of Goa
represented by Dy. Collector
(Land Acquisition),
Collectorate of Goa (S),
Margao - Goa.

2. Executive Engineer,
Works Division VI (Roads-South)
Public Works Department,
Fatorda, Margao - Goa.

.... Appellants.

V/s.

1. Smt. Marianinha Vaz,

2. Annette Francisca Joana
Rodrigues,

3. Alvaro Paulo Brazinho Ferrao,

Resident of Calata,
Salcete, Goa.

.... Respondents.

Mr. H.R. Bharne, Government Advocate for the
appellants.

Mr. Sudesh M.S. Usgaonkar, Advocate for the
respondents.

CORAM : R.J. KOCHAR, J.

DATE OF RESERVING THE JUDGMENT: 12/09/2003

DATE OF PRONOUNCING THE JUDGMENT: 25/09/2003

J U D G M E N T :

The State of Goa and the Executive Engineer,
Works Division VI (Roads-South) are the appellants, who
are aggrieved by the impugned Award dated 7.8.1999,
passed by the District Judge, South Goa, Margao in Land

Acquisition Case No.22/1997 as a reference made under Section 18 of the Land Acquisition Act by the Dy. Collector and the Land Acquisition Officer, Margao at the request of the present respondents in appeal.

2. The facts, in nut-shell, are as under :

The suit land was acquired for construction of a road in the Village Panchayat of Majorda, Salcete. The area acquired was from Survey No.9/2 of Village Colata admeasuring 500 sq. metres. The Land Acquisition Officer offered Rs.7/- per sq. metre by way of compensation. The respondents were not satisfied with the said offer and, therefore, prayed for a reference under Section 18 of the Act, which was made by the Dy. Collector and L.A.O. The Notification under Section 4(1) of the Land Acquisition Act was dated 30.9.1991 and the same was published in the Official Gazette dated 9.4.1992.

3. The respondents who were the applicants in the reference filed their pleadings and adduced evidence in support of their claim for compensation at the rate of Rs.150/- per sq. metre. They also claimed a sum of Rs.13,900/- towards the coconut trees situated on the suit plot. The learned Judge framed two issues in respect of grant of compensation at the rate of

Rs.150/- per sq. metre for 500 sq. metres acquired land and also for compensation for the coconut trees. The respondents examined two witnesses and adduced documentary evidence. The learned trial Judge considered the pleadings and the evidence on record and answered the two issues partly in favour of the respondents. The learned Judge has not granted the claim of the respondents in its entirety, but awarded Rs.71/- per sq. metre as compensation for the suit plot on the grounds set out in the impugned Judgment. According to the appellants, the learned trial Judge was in error in determining the market rate and the amount of compensation at the rate of Rs.71/- per sq. metre. According to the appellants, the award of the trial Court is arbitrary and ignores the well settled principles for determining the market rate. The appellants have also questioned the award on the basis of the sale deeds produced by the respondents for enhancement of the amount. According to the appellants, the sale deeds were not comparable with the suit plot. Shri Bharne, the learned Government Advocate has relied on a Judgment of the Supreme Court in **Tarlochan Singh and another vs. State of Punjab and others**, (1995) 2 SCCs 424. Shri Bharne further submitted that it was only a strip of land from the total area owned by the respondents, which was acquired for the purpose of a public road and that such a strip

would not fetch any higher price to be compared with a sale of the plot, as on a strip of 500 sq. metres, no useful construction can be made. He also pointed out that there was no development potential for the land. In these circumstances, according to the learned Government Advocate, the offer of Rs.7/- per sq. metre given by the Land Acquisition Officer as compensation was just and proper. According to Shri Bharne, the grant of Rs.71/- per sq. metres as compensation was extremely high and, therefore, the Award of the learned District Judge should be quashed and set aside. Shri Sudesh Usgaonkar, the learned Counsel appearing for the respondents has strongly supported the award of the trial Court. He has relied on the following Judgments of the Supreme Court in support of his submissions:

(1988) 2 Supreme Court Cases 751;

1995 Supp (2) Supreme Court Cases 168; and

(1998) 8 Supreme Court Cases 136.

4. I need not refer to the case law cited by the learned Counsel, as there is no quarrel with the propositions of law laid down in the above authorities. The facts of the present case are very simple. The appellants have acquired a strip of 500 sq. metres of land, which was owned by the respondents for the public purpose of providing a road. The Land Acquisition

Officer had offered a sum of Rs.7/- per sq. metre as compensation. This offer was not acceptable to the respondents and, therefore, the present reference arose at the request of the respondents. Before the trial Court, the respondents have relied on a comparable sale deed, from the very same village prior to the date of Notification. In the said sale deed, the area sold was 384 sq. metres for Rs.46,000/-. The learned Judge has rightly derived the rate at Rs.119/- per sq. metre. The distance between the aforesaid land under the said sale deed and the present suit land is 1 Km. It has also been established by the respondents that the suit plot lies in settlement zone and this statement has not been challenged by the appellants. On the basis of the oral and documentary evidence, the learned Judge has come to a definite conclusion that the suit plot lies in the settlement zone and that there are residential houses in the vicinity of the suit plot. The learned Judge has also considered the evidence on record to conclude that the suit plot was having the potential for construction. The learned Judge has also considered another fact of other sale deed though of the post-Notification period, involving the sale and purchase of just adjoining land for a limited purpose to find out that the suit land was also suitable for construction purpose. In the said adjoining land, a house has been constructed. It is, therefore, clear

that the suit land is near the said land where the house was constructed. From all these facts on record, the learned Judge has rightly concluded that the suit plot is in a settlement zone and in the adjoining area there are residential houses. The argument that only a strip of land is taken away and, therefore, it has no value, is to be stated only to be rejected. In the same area and in the same village, on the basis of a comparable sale deed of pre-notification period, the learned Judge has rightly valued the suit land and has given proper deductions from the market value of Rs.119/- per sq. metre. After giving deductions of 40 %, the learned Judge has awarded Rs.71/- per sq. metre, as compensation. The learned Judge has followed the principle of granting deductions in respect of undeveloped plot as laid down in the Judgment reported in 1998(1) Goa L.T. 324, **(State of Goa and another vs. Smt. Olga Seco Gomes da Costa)**; and another Judgment reported in 1998(1) Goa L.T. 351 **(State of Goa and another vs. M/s. Sapna Real Estate)**. In my opinion, the learned Judge has rightly enhanced the amount of compensation offered by the Land Acquisition Officer from Rs.7/- per sq. metre to Rs.71/- per sq. metre. The offer of Rs.7/- per sq. metre is just ridiculous as for Rs.7/- not even one piece of idly or one good apple is available. The learned Judge has rightly computed the market value by relying on a comparable

sale of the land in the same locality, about 1 Km. away from the suit plot. He has also properly given deductions of 40 % following the principles laid down by the aforesaid two rulings in respect of the value of an undeveloped plot. I do not find any error of law or error of facts, committed by the learned trial Judge while enhancing the compensation from Rs.7/- per sq. metre to Rs.71/- per sq. metre. The offer of Rs.7/- per sq. metre as compensation, sounds just ridiculous and a pittance, as for Rs.7/- to accept one sq. metre land can never be imagined. Merely because the difference between the two prices sounds too high, it cannot be said that the learned Judge has granted an astronomical enhancement as the offer of Rs.7/- per sq. metre itself was extremely low and could not have been made. The learned Judge has considered all the facts and the prevalent market value and has computed the compensation by doing some permissible guess work with which it is not possible for me to find any fault. There is no illegality or infirmity in the Judgment and order of the learned trial Court. There is no substance in the first appeal which deserves to be dismissed and the same is dismissed with no order as to costs. The respondents are, hereby, allowed to withdraw the amount of compensation deposited by the appellants with accrued interest.

R.J. KOCHAR, J.